

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**HAMILTON TOWNSHIP
VOLUNTEER FIRE COMPANY
DOCKET NO. 29-2003-0459**

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND PROPOSED ORDER**

An administrative hearing was held on Thursday, February 12, 2004 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, Administrative Law Judge, acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, Hamilton Township Volunteer Fire Company, was represented by Eric Baty. Steve Carpenter appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-5, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Proposed Order.

REASON FOR HEARING

On November 20, 2003, the Petitioner's application to conduct charity gaming was denied. The Petitioner protested in a timely manner.

FINDINGS OF FACTS

- 1) Petitioner submitted a CG-2 (Indiana Department of Revenue Annual Bingo and/or Pull Tab Application) dated July 11, 2003 to the Indiana Department of Revenue. (Department's Exhibit A).
- 2) Petitioner's CG-2 was received by the Compliance Division of the Indiana Department of Revenue on July 22, 2003 and August 27, 2003. (Department's Exhibit A).
- 3) Petitioner's CG-2 was signed by Charles F. Rife and Tim Baty. Above their signatures is a certification which states, "We certify under penalty of perjury that the organization applying is a qualified organization, and that there are no misrepresentation or falsification in the information stated. We understand that false or misleading statements will cause rejection of this application or revocation of future license(s)." (Department's Exhibit A).

- 4) Line 8 on Department Form CG-2 states, "Does your organization own, lease (rent), or use a donated facility where the licensed event will be conducted? (Check one)." Petitioner checked lease (rent).
- 5) Line 8 continues, "**If leased** (rented), enter name and address of lessor and attach a copy of your signed lease agreement. **If donated**, attach a **notarized** statement from the donor that the facility is being offered rent free." Petitioner listed Network Agency.
- 6) Line 9 on Department Form CG-2 states, "Is any tangible personal property (i.e. tables, chairs, bingo blowers, etc.) being leased or donated to you for this event." Petitioner answered "Yes." (Department's Exhibit A).
- 7) Line 9 continues, "If you answered yes, list the name and address of the lessor or donor. Attach a signed copy of the lease agreement or donation statement from the donor." Petitioner listed only Network Agency (Department's Exhibit A).
- 8) Line 10 on Department Form CG-2 states, "Does your organization own bingo equipment?" Petitioner answered "No." Line 10 continues, "If you answered yes, list the seller's name, date of purchase, purchase price, and the type of equipment purchased." However, even though Petitioner checked "No" it listed "Shawn Dyer" under the name of the seller and under date of purchase put "donated when needed." (Department's Exhibit A).
- 9) The Indiana Department of Revenue Criminal Investigation Division conducted an investigation of the Petitioner on September 25, 2003. (Department's Exhibit H).
- 10) Petitioner provided the Department with two (2) leases.
- 11) The first lease, submitted with its Form CG-2, was between the Petitioner and Network Agency dated July, 1, 2003. (Department's Exhibit B).
- 12) The second lease, dated September 24, 2003, submitted to the Department's Criminal Investigation Agent was between the Petitioner and Susie Lambert. (Department's Exhibit C).
- 13) After reviewing all the leases submitted into evidence (specifically Department's Exhibits B, C, D, and E) it is impossible to tell who actually has the valid lease to the property to be used by the Petitioner for its charity gaming.
- 14) It is evident that the lease dated September 24, 2003, was created in the hopes of satisfying the Department, and does not reflect the true intentions of the parties.
- 15) A review of Petitioner's 2003 membership roster does not show a Shawn Dyer as a member. (Department's Exhibit F).
- 16) Petitioner stated that Shawn Dyer is a member of its organization. (Record at 23).
- 17) Shawn Dyer is not licensed as either a manufacturer or distributor to sell, distribute, or manufacture bingo equipment. (Department's Exhibit G).
- 18) Petitioner stated that they had not purchased any equipment from Shawn Dyer and they have now made arrangements with Lancaster Bingo a licensed distributor. (Record at 20).

- 19) Petitioner argues that the only reason they listed Shawn Dyer on its application is that the equipment already in place at the location to be used for gaming purposes belongs to Shawn Dyer. (Record at 20).
- 20) In reviewing Petitioner's CG-2, there was no signed copy of the lease agreement or donation statement from the donor concerning the tangible personal property to be used by the Petitioner in conducting its gaming operation. (Department's Exhibit A).

STATEMENT OF LAW

- 1) Pursuant to 45 IAC 18-8-4, the burden of proving that the Department's findings are incorrect rests with the individual or organization against which the department's findings are made. The department's investigation establishes a prima facie presumption of the validity of the department's findings.
- 2) The Department's administrative hearings are conducted pursuant to IC § 4-21.5 et seq. (See, House Enrolled Act No. 1556).
- 3) "[B]ecause Pendelton's interest in his insurance license was a property interest, and not a liberty interest. Rather, a preponderance of the evidence would have been sufficient." Pendelton v. McCarty, 747 N.E. 2d 56, 65 (Ind. App. 2001).
- 4) "It is reasonable...to adopt a preponderance of the evidence standard where it can be demonstrated that a protected property interest exists." Burke v. City of Anderson, 612 N.E.2d 559, 565 (Ind.App. 1993).
- 5) IC 4-32-7-4 provides, "(a) The department has the sole authority to license entities under this article to sell, distribute, or manufacture the following:
 - (1) Bingo cards.
 - (2) Bingo boards.
 - (3) Bingo sheets.
 - (4) Bingo pads.
 - (5) Any other supplies, devices, or equipment designed to be used in playing bingo designated by rule of the department.
 - (6) Pull tabs.
 - (7) Punchboards.
 - (8) Tip boards.
 (b) Qualified organizations must obtain the materials described in subsection (a) only from an entity licensed by the department.
 (c) The department may not limit the number of qualified entities licensed under subsection (a).
- 6) IC 4-32-12-1 provides in pertinent part, "The department may suspend or revoke the license of or levy a civil penalty against a qualified organization or an individual under this article for any of the following:
 - (1) Violation of a provision of this article or of a rule of the department.
 - (2) Failure to accurately account for:
 - (A) bingo cards;

- (B) bingo boards;
- (C) bingo sheets;
- (D) bingo pads;
- (E) pull tabs;
- (F) punchboards; or
- (G) tip boards.

(3) Failure to accurately account for sales proceeds from an event or activity licensed or permitted under this article.

(4) Commission of a fraud, deceit, or misrepresentation.

(5) Conduct prejudicial to public confidence in the department.

(b) If a violation is of a continuing nature, the department may impose a civil penalty upon a licensee or an individual for each day the violation continues.”

CONCLUSIONS OF LAW

- 1) On November 20, 2003, the Petitioner’s application to conduct charity gaming was denied.
- 2) Petitioner appealed the denial in a timely manner.
- 3) The issue at hearing was whether the Department’s denial was proper.
- 4) Petitioner’s officers signed CG-2 stating that they understood that false statements on its application would cause the rejection of the application.
- 5) The Petitioner’s did not have a properly executed CG-2.
- 6) A valid lease for the premises, to be used by the Petitioner, did not accompany its CG-2 application.
- 7) Petitioner’s gaming equipment, allegedly owned by Shawn Dyer, and which was to be used for charity gaming purposes violates the provisions of IC 4-32-7-4.
- 8) Petitioner’s inability to properly fill out its charity gaming application, and obvious misunderstanding of the charity gaming laws, produced inconsistencies in its application amounting to sufficient provocation to warrant the denial of its application.

PROPOSED ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner’s appeal is denied. However, Petitioner may correct/amend its application and resubmit it to the Department. If Petitioner chooses to amend its application for resubmission, the Department is directed to expedite its review.

- 1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).

- 2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: _____

Bruce R. Kolb / Administrative Law Judge